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Joint Committee of the Senate and the House of Commons
SESSION 1947-48
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SPECIAL JOINT COMMITTEE OF THE SENATE
AND THE HOUSE OF COMMONS

ON

HUMAN RIGHTS

AND

FUNDAMENTAL FREEDOMS

MINUTES OF PROCEEDINGS INCLUDING
THE SECOND AND FINAL REPORT

No. 11

MONDAY, JUNE 21, 1948

WEDNESDAY, JUNE 23, 1948

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

REPORT TO THE SENATE

FRIDAY, 23rd June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms beg leave to make their second and final report, as follows:—

Your Committee, as a preliminary step in its enquiry resolved a portion of its order of reference of February 18, 1948, into three parts, namely:

- (a) To consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;

AND, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights.

- (b) What is the legal and constitutional situation in Canada with respect to such rights;

- (c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;

for consideration in the order (a), (c) and (b).

With respect to part (a), your Committee gave immediate consideration to the draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations.

Although not legally binding upon States, such a document, being a statement of principles, will tend to influence the course of legislation in States which consider themselves morally bound by its provisions, and will, therefore, promote human rights and fundamental freedoms.

As the draft Declaration has been undergoing changes at recent meetings of organs of the United Nations, your Committee decided that it should not attempt to prepare a further draft but should examine critically the principles set out in the existing draft together with such comments of other Governments as were available.

✓ Your Committee considers that the Declaration would be more effective if stated in a shorter, more concise form. As there is no assurance that any specific draft prepared by your Committee would be accepted by the United Nations, your Committee does not suggest any particular revision of the draft submitted but recommends that the Government, in presenting its views to the United Nations, have in mind the views of members of your Committee as ✓ reported in the record of proceedings and evidence.

With respect to part (c), your Committee invited written representations from groups and organizations which had expressed a desire to place their views before your Committee. Written submissions were made by:

- (a) Canadian Jewish Congress;
- (b) Congregations of Jehovah's Witnesses;
- (c) Civil Rights Union of Toronto;
- (d) Canadian Daily Newspapers Association;
- (e) Organizations representing the Chinese people of Canada;
- (f) Committee for a Bill of Rights, Toronto.

As a result of these representations your Committee gave consideration to the enactment of a bill of rights for Canada.

Although all the briefs submitted did not recommend a bill of rights for Canada, those which contained such recommendation favoured the enactment of a bill of rights by constitutional amendment rather than by a federal statute.

At the request of the Committee, the Deputy Minister of Justice was heard in relation to the effect of the enactment of a Bill of Rights as (1) a federal statute; (2) a constitutional amendment; and, in particular, to its effect on existing and prospective provincial and dominion legislation, the common law, the sovereignty of Parliament, and the prerogatives of the Crown.

Your Committee is of opinion that to attempt to enact a Bill of Rights for Canada as a federal statute would be unwise for the following among other reasons.

The power of the Dominion Parliament to enact a comprehensive bill of rights is disputed. This is indicated by the letters received in reply to an invitation addressed by the Committee to the Attorneys-General of the Provinces and to Deans of certain law schools to express their opinions with respect to the power of Parliament to enact a comprehensive Bill of Rights applicable to all of Canada.

Clarification of the extent of the Dominion's powers by reference of questions to the Supreme Court of Canada has been suggested, but these questions, in addition to presenting serious drafting difficulties, would certainly initiate a legal and constitutional controversy with the provinces which might be far-reaching.

Despite this fact, the submission of such questions might be desirable if the answers could be taken as settling the law, and if a federal statute based on such answers effected a constitutional guarantee of human rights and fundamental freedoms. The fact is, however, that the answers would not be the equivalent in binding effect of a decision in a litigated case arising on particular facts. Moreover, a federal statute enacted on the basis of answers to such questions would not effect any constitutional guarantee of rights as it could be amended or repealed at any time by Parliament. Until amended or repealed it would bind the provincial legislatures (to the extent that it was constitutionally valid) but not the Dominion Parliament, as subsequent legislation of the Dominion Parliament inconsistent with its terms could take effect notwithstanding its terms.

It is perhaps for these reasons that the submissions to your Committee in support of a Bill of Rights favour a constitutional amendment rather than a federal statute. Your Committee is, therefore, unable to recommend that the Government give favourable consideration to the enactment of a Bill of Rights in the form of a federal statute.

In view of the fact that decisions by the Supreme Court of Canada in individual cases would be far more satisfactory than upon a general reference in determining the powers of Parliament and the Legislatures, your Committee gave some consideration to the question as to whether the jurisdiction of the Supreme Court of Canada should not be enlarged so that by leave of that Court, appeals would lie on questions of law in some instances in which there is now no appeal. Your Committee is of opinion that the Government should give consideration to such an enlargement and so recommends.

Due to pressure of time it was impossible for your Committee to call those who made submissions to your Committee to support them orally. It is possible that had those who submitted the draft Bill to amend the British North America Act been present they could have answered some or all of the numerous

questions which have arisen in the minds of members of your Committee regarding the consequences of incorporating the provisions of this draft bill in the British North America Act.

From the evidence of the Deputy Minister of Justice, however, it would appear that these consequences are so uncertain and may, in some instances at least be so undesirable, that your Committee would not be justified in recommending, without a great deal of further study, the adoption of recommendations such as those contained in the submission of the Committee for a Bill of Rights, Toronto.

Your Committee recommends that in considering proposals for the enactment of a Bill of Rights as a constitutional amendment the Government not only give full consideration to the submissions to the Committee, the evidence of the Deputy Minister of Justice and the comments of the members of the Committee, as they appear from the record of the proceedings, but also obtain the assistance of officers of the Department of Justice or an interdepartmental committee, and such others as it may consider necessary.

In making this report your Committee wishes to state its belief that Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly. The difficulty of such a task is shown by the struggles for agreement on the wording of an International Bill of Rights which have been occupying the time of the United Nations for so long. However, the meaning of human rights and fundamental freedoms is in general well understood. They exist, are enjoyed and must be preserved.

Attention may be drawn to circumstances in which fundamental rights are alleged to have been curtailed. It is desirable that such circumstances be examined critically and earnestly for they prompt the government and Parliament of the day to take stock of the extent to which Canada has maintained civil rights and liberties for her people. If imperfections appear, are recognized and are remedied progress is made towards full realization of the ideal of general observance of human rights and fundamental freedoms for all envisaged in the Charter of the United Nations.

Respect for and observance of these rights and freedoms depends in the last analysis upon the convictions, character and spirit of the people. There is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your Committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.

But whatever steps be advocated by way of statutory enactment or otherwise to preserve human rights and fundamental freedoms, Canadians must never fail to recognize that the ultimate and effective safeguard of those rights and freedoms lies in the people themselves, and in a resolute and effective public opinion.

A copy of the Printed Minutes of Proceedings and Evidence of your Committee is appended.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman.

REPORT TO THE HOUSE OF COMMONS

FRIDAY, June 25, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms begs leave to present the following as a

SECOND AND FINAL REPORT

Your Committee, as a preliminary step in its enquiry, resolved a portion of its Order of Reference of April 16, 1948, into three parts, namely:

- (a) To consider the question of human rights and fundamental freedoms, and the manner in which those obligations accepted by all members of the United Nations may best be implemented;
And, in particular, in the light of the provisions contained in the Charter of the United Nations, and the establishment by the Economic and Social Council thereof of a Commission on Human Rights.
 - (b) What is the legal and constitutional situation in Canada with respect to such rights;
 - (c) And, what steps, if any, it would be advisable to take or to recommend for the purpose of preserving in Canada respect for the observance of human rights and fundamental freedoms;
- for consideration in the order (a), (c) and (b).

With respect to part (a), your Committee gave immediate consideration to the draft International Declaration on Human Rights forwarded to the Government by the Secretary-General of United Nations.

Although not legally binding upon States, such a document, being a statement of principles, will tend to influence the course of legislation in States which consider themselves morally bound by its provisions, and will, therefore, promote human rights and fundamental freedoms.

As the draft Declaration has been undergoing changes at recent meetings of organs of the United Nations, your Committee decided that it should not attempt to prepare a further draft but should examine critically the principles set out in the existing draft together with such comments of other Governments as were available.

Your Committee considers that the Declaration would be more effective if stated in a shorter, more concise form. As there is no assurance that any specific draft prepared by your Committee would be accepted by the United Nations, your Committee does not suggest any particular revision of the draft submitted but recommends that the Government, in presenting its views to the United Nations, have in mind the views of members of your Committee as reported in the record of proceedings and evidence.

With respect to part (c), your Committee invited written representations from groups and organizations which had expressed a desire to place their views before your Committee. Written submissions were made by:

- (a) Canadian Jewish Congress;
- (b) Congregations of Jehovah's Witnesses;
- (c) Civil Rights Union of Toronto;
- (d) Canadian Daily Newspapers Association;
- (e) Organizations representing the Chinese people of Canada;
- (f) Committee for a Bill of Rights, Toronto.

As a result of these representations your Committee gave consideration to the enactment of a bill of rights for Canada.

Although all the briefs submitted did not recommend a bill of rights for Canada, those which contained such recommendation favoured the enactment of a bill of rights by constitutional amendment rather than by a federal statute.

At the request of the committee, the Deputy Minister of Justice was heard in relation to the effect of the enactment of a Bill of Rights as (1) a federal statute; (2) a constitutional amendment; and, in particular, to its effect on existing and prospective provincial and dominion legislation, the common law, the sovereignty of Parliament, and the prerogatives of the Crown.

Your Committee is of opinion that to attempt to enact a Bill of Rights for Canada as a federal statute would be unwise for the following among other reasons.

The power of the Dominion Parliament to enact a comprehensive bill of rights is disputed. This is indicated by the letters received in reply to an invitation addressed by the Committee to the Attorneys-General of the Provinces and to Deans of certain law schools to express their opinions with respect to the power of Parliament to enact a comprehensive Bill of Rights applicable to all of Canada.

Clarification of the extent of the Dominion's powers by reference of questions to the Supreme Court of Canada has been suggested, but these questions, in addition to presenting serious drafting difficulties, would certainly initiate a legal and constitutional controversy with the provinces which might be far-reaching.

Despite this fact, the submission of such questions might be desirable if the answers could be taken as settling the law, and if a federal statute based on such answers effected a constitutional guarantee of human rights and fundamental freedoms. The fact is, however, that the answers would not be the equivalent in binding effect of a decision in a litigated case arising on particular facts. Moreover, a federal statute enacted on the basis of answers to such questions would not effect any constitutional guarantee of rights as it could be amended or repealed at any time by Parliament. Until amended or repealed it would bind the provincial legislatures (to the extent that it was constitutionally valid) but not the Dominion Parliament, as subsequent legislation of the Dominion Parliament inconsistent with its terms could take effect notwithstanding its terms.

It is perhaps for these reasons that the submissions to your Committee in support of a Bill of Rights favour a constitutional amendment rather than a federal statute. Your Committee is, therefore, unable to recommend that the Government give favourable consideration to the enactment of a Bill of Rights in the form of a federal statute.

In view of the fact that decisions by the Supreme Court of Canada in individual cases would be far more satisfactory than upon a general reference in determining the powers of Parliament and the Legislatures, your Committee gave some consideration to the question as to whether the jurisdiction of the Supreme Court of Canada should not be enlarged so that by leave of that Court, appeals would lie on questions of law in some instances in which there is now no appeal. Your Committee is of opinion that the Government should give consideration to such an enlargement and so recommends.

Due to pressure of time it was impossible for your Committee to call those who made submissions to your Committee to support them orally. It is possible that had those who submitted the draft Bill to amend the British North America Act been present they could have answered some or all of the numerous questions which have arisen in the minds of members of your Committee regarding the consequences of incorporating the provisions of this draft bill in the British North America Act.

From the evidence of the Deputy Minister of Justice, however, it would appear that these consequences are so uncertain and may, in some instances at least, be so undesirable, that your Committee would not be justified in recommending, without a great deal of further study, the adoption of recommendations such as those contained in the submission of the Committee for a Bill of Rights, Toronto.

Your Committee recommends that in considering proposals for the enactment of a Bill of Rights as a constitutional amendment the Government not only give full consideration to the submissions to the Committee, the evidence of the Deputy Minister of Justice and the comments of the members of the Committee, as they appear from the record of the proceedings, but also obtain the assistance of officers of the Department of Justice or an interdepartmental committee, and such others as it may consider necessary.

In making this report your Committee wishes to state its belief that Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly. The difficulty of such a task is shown by the struggles for agreement on the wording of an International Bill of Rights which have been occupying the time of the United Nations for so long. However, the meaning of human rights and fundamental freedoms is in general well understood. They exist, are enjoyed and must be preserved.

Attention may be drawn to circumstances in which fundamental rights are alleged to have been curtailed. It is desirable that such circumstances be examined critically and earnestly for they prompt the government and Parliament of the day to take stock of the extent to which Canada has maintained civil rights and liberties for her people. If imperfections appear, are recognized and are remedied progress is made towards full realization of the ideal of general observance of human rights and fundamental freedoms for all envisaged in the Charter of the United Nations.

Respect for and observance of these rights and freedoms depends in the last analysis upon the convictions, character and spirit of the people. There is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your Committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.

But whatever steps be advocated by way of statutory enactment or otherwise to preserve human rights and fundamental freedoms, Canadians must never fail to recognize that the ultimate and effective safeguard of those rights and freedoms lies in the people themselves, and in a resolute and effective public opinion.

A copy of the printed Minutes of Proceedings and Evidence of your Committee is appended.

All of which is respectfully submitted.

J. L. ILSLEY,
Chairman.

MINUTES OF PROCEEDINGS

MONDAY, 21st June, 1948.

The Special Joint Committee on Human Rights and Fundamental Freedoms met, in camera, at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley, presided.

Also present:

The Senate: Honourable Senators Horner, McDonald (*Kings*), Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Macdonnell (*Muskoka-Ontario*), Marier, Robinson (*Simcoe-East*), Whitman.

By leave of the Committee, Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was in attendance.

The Committee undertook consideration of a final report to both Houses.

Pursuant to a notice of motion filed on June 17, by Mr. Diefenbaker, the following was considered:

That the Minister of Justice be requested forthwith to refer to the Supreme Court of Canada for determination by that Court of: (a) The question as to the power and jurisdiction of the Parliament of Canada to enact a Bill of Rights respecting the fundamental freedoms of religion, speech (including radio), press and assembly as well as the constitutional and traditional safe-guards of the individual. (b) The question of the extent to which such fundamental freedoms or constitutional safe-guards are within the legislative competence of the Provinces.

And the question being put, it was resolved in the negative.

The Committee adjourned at 5.30 o'clock p.m. to meet again, Wednesday, 23rd June, at 4.00 o'clock p.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

WEDNESDAY, 23rd June, 1948.

The Special Joint Committee of the Senate and the House of Commons on Human Rights and Fundamental Freedoms met, in camera, at 4.00 o'clock p.m. The Joint Chairman, Right Honourable J. L. Ilsley and Honourable L. M. Gouin were present. Mr. Ilsley presided.

Also present:

The Senate: Honourable Senators Crerar, McDonald (*Kings*), Roebuck, Turgeon, Wilson.

The House of Commons: Messrs. Beaudoin, Breithaupt, Fulton, Hackett, Hazen, Herridge, Michaud, Rinfret, Robinson (*Simcoe-East*), Stewart (*Winnipeg-North*), Whitman.

By leave of the Committee, Mr. D. H. W. Henry, Counsel, Department of Justice, Ottawa, was in attendance.

The Committee considered a draft final report to both Houses.

The draft final report, as amended, was adopted.

Ordered,—That the Joint Chairmen present said report to both Houses.

At 6.05 o'clock p.m. the Committee adjourned *sine die*.

J. G. DUBROY,
Clerk of the Committee.

